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# RECOMMENDED PROVISIONS AND AMENDMENTS TO THE VARIOUS TAX PROPOSALS

Submitted by Carole Vilardo on behalf of the Nevada Taxpayers Association - Revised June 4, 2003

*Please note: Some of the recommended changes refer to provisions contained in the Governor's, Task Force or Amodei/Care bills. The revisions contained herein still reflect changes that would be needed if sections of those bills were used. This revision also incorporates issues contained in SB 509 and the Assembly Tax Package that the Association believes need to be resolved.*

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### ATTACHMENT 1

#### AMUSEMENT/ENTERTAINMENT TAX

(Elements of this tax are in the Governor's and Task Force bills. Additionally, a variation called the "Live Entertainment Tax" has been proposed.)

*Recommendation:* Provide for registration of the person collecting the tax. (This would only apply to the Department of Taxation not Gaming if the Live Entertainment Tax proposal is enacted.)

*Reason:* This is standard in the tax statutes whereby a person/business is collecting the tax and remitting it to the State, and addresses the issues of when a permit has not been issued or is revoked.

*Recommendation:* Provide that a business will remit the tax and be audited based on how the business tax return is filed with IRS. Require the reporting form to indicate how the business is reporting - cash or accrual.

*Reason:* This accommodates those persons/businesses that use the cash basis method of accounting instead of the accrual method of accounting. Without this provision, those businesses/persons who do not receive payment have no way of deducting the bad debt. Additionally, they will not need to maintain a "second set" of books to satisfy audits.

*Recommendation:* Amend to add that tickets sold prior to the effective date of this bill are not subject to the increased tax.

*Reason:* Frequently, blocks of tickets are purchased by groups or brokers for events in the future. There is no easy way to collect this tax on pre-sold tickets. This is not an uncommon provision, and has normally appeared in bills which increase the sales tax rate.

*Recommendation:* (Amodei/Care bill) -Provide that the amount of the collection allowance is allowed within a specific time frame (i.e. 1% if the tax is remitted by the 15<sup>th</sup> day of the reporting period.)

*Reason:* This provides certainty in the time frame, rather than using a phrase such as "mid-month".

*Recommendation:* Provide that the reduction in the collection allowance is not a bifurcated rate based on the remittance date.

*Reason:* The Department cannot handle a bifurcated system until it has a new computer system.

*Recommendation:* (Live entertainment proposal) The Live Entertainment Tax should not be split between two collecting agencies - Gaming Control Board and Department of Taxation.

*Reason:* This becomes problematic relative to the regulations which would be adopted by the Department of Taxation, vs. those that are currently in place as adopted by the Gaming Control Board. Moving the collection to the Department of Taxation would not be unusual as the collection of the insurance premium tax and the car rental tax was moved to the Department of Tax from the Insurance Division and DMV.

*Recommendation:* (Live entertainment proposal) If the Live Entertainment Tax is left between two collecting agencies - Gaming Control Board and Department of Taxation a provision should be added that would require conformity of regulations.

*Reason:* If regulations are not uniform then the potential exists for the same types of businesses that provide live entertainment being subjected to different interpretations as to the application of the tax.

*Question:* (Pertains to SB 509 and Tax Package) Does Section 67 which defines "Admission Charge" capture non-boxing sporting events? Section 72 which defines "Live Entertainment" would appear to do so, however the basis for this version of an amusement/entertainment tax developed from the elimination of certain exemptions found in the Casino Entertainment Tax and the subsequent expansion of "live entertainment" to non-casino venues? Since the Tax Commission under Section 75 is required to provide a more detailed definition consistent with Section 72, it would appear that additional specificity is needed.

## BUSINESS TAXES

### BUSINESS LICENSE ANNUAL RENEWAL (NRS 364A)

*Recommendation:* If there is still a concern about including those sole proprietors, such as direct sellers, an amendment should be provided to exclude those persons who do not employ other persons.

*Reason:* If this is the only reason not to create the annual Business license Renewal fee, excluding a sole proprietor who does not pay wages would solve this concern. A new section could be added with the following as possible language:

*"A sole proprietor who meets the requirements of NRS 364A.130, Section 5, paragraph (c) is subject to the provisions of this chapter.*

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### BUSINESS LICENSE TAX INCREASE (NRS 364A)

*Recommendation:* Provide that a contract entered into prior to the effective date of this bill which cannot be reopened or has a non-escalating clause is not subject to the increased tax.

*Reason:* If the contract does not contain a reopening provision or contains a non-escalating clause, a financial burden is created for the person/business who is providing the service under contract. This is a common provision which is used when there has been an increase in the sales tax rate.

*Recommendation:* Consider an amendment to remove individuals that have a business but do not pay wages from being included with sole proprietors who will now become subject to the tax. (See above "Business License Annual Renewal for suggested language.)

*Reason:* Due to the problems in identifying many of these individuals since there are a number of local governments that do not require a business license.

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### BUSINESS TAX SURCHARGE (Amodei/Care bill and Townsend proposal.)

*Recommendation:* Delete this section from NRS 612 and amend to add a new provision to NRS 364A.

### **PLEASE SEE ATTACHMENT FOR NEW PROPOSED VERSION OF BUSINESS TAX**

~~1. In addition to the tax imposed pursuant to NRS 364A.140, a surcharge is hereby imposed on each employer at the following rate:~~

~~(a) If the employer employs not more than 2 full-time employees, the employer shall pay a surcharge at a rate of 2 percent of the taxable wages as reported on the Employer's Quarterly Contribution and Wage Report, or the successor form as filed with the Nevada Employment Security Division.~~

~~2. The surcharge imposed by this section must not be deducted in whole or in part, from the wages of persons in employment for that employer.~~

~~3. The surcharge imposed by this section must be collected by the Department at the same time and in the same manner as provided for the business tax.~~

~~4. As used in this section, "employer" does not include:~~

~~(a) A person to whom a gaming license has been issued pursuant to NRS 463.301~~

~~(b) An agricultural employer as defined in NRS 612.055~~

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## BUSINESS TAX SURCHARGE CONTD.

~~(c) A public utility as defined in NRS 704.020~~

~~(d) A person who owns or operates a mine and is subject to the provisions of NRS 362.~~

~~5. The Department shall modify the business tax form to include the surcharge imposed by this section.~~

~~Reason: While the Employment Security Division does collect the Unemployment Tax, it is not done for purposes of collecting revenue for the State's general fund. Other problems are: the Division does not have an appeals process (other than for claims) and; businesses would not be afforded the protections granted by the Taxpayers Bill of Rights which applies only to those taxes in Title 32.~~

~~A separate billing should not be done by the Department of Taxation; instead the necessary information should be accommodated on the existing Business Tax reporting form to minimize the cost of collection.~~

*Recommendation:* Regardless of who ultimately collects this tax, the Department of Taxation or the Employment Security Division there should be an amendment so that the definition of "affiliated businesses" used by both is the same .

*Reason:* This would simplify the exchange of information between the two agencies and allow the sharing of audit information.

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## GROSS RECEIPTS TAX/ UNIVERSAL BUSINESS TAX

*Recommendation:* Allow a credit or refund to be given. (This is accommodated in SB 509 and Tax Package)

*Reason:* If a business ceases operation and has a carry-forward credit, there is no mechanism for a business to receive a refund or credit to apply to other taxes that might be due.

*Recommendation:* Provide that for the purposes of apportioning income that UDITPA (Uniform Distribution of will be used and that the weighted average for each element shall be placed in statute.

*Reason:* The Tax Commission should not be making these policy determinations.

*Recommendation:* Provide that the method of accounting - cash or accrual - used by a business to file their federal tax return will be the method used for calculating the businesses tax liability.

*Reason:* Without this provision a business on cash basis accounting cannot deduct bad debt, and they would need to keep two sets of books for purposes of Department audits.

*Recommendation:* Define "substantial nexus". (Not applicable in SB 509 or Tax Package)

*Reason:* Nexus can be defined as physical or economic. This is a major policy decision that should not be left to the purview of the Tax Commission.

*Recommendation:* Remove the standard "clear and convincing evidence" for appeals to the Tax Commission. (Not applicable in SB 509 or Tax Package)

*Reason:* This is not the standard in use in other provisions in Title 32. It would also contradict the provisions contained in the Taxpayers Bill of Rights.

## Questions and Comments on the GRT/UBT

Section 4 in relation to the definition of a "natural person" as defined in Section 17

Filers using Schedule C pay income tax on income and dividends and the gain or loss on the sale of assets. It would appear that a sole proprietor or partnership would have their personal income taxed which is in violation of Nevada's Constitution Article 10, Section 1, subsection 9.

## Questions and Comments on the GRT/UBT contd.

### Section 4 in relation to the definition of a "natural person" as defined in Section 17 contd.

Independent Contractors that do not file a schedule C or F would appear not to be captured by the GRT, yet Section 4 specifically includes them.

### Section 7 regarding cost of goods sold in relation to the language in Sections 9,10 and 18.

It appears from the reading the above referenced sections that any tangible goods which are produced whether sold or not will be subject to the tax. Effectively we are taxing inventory (goods not sold) which is prohibited by Nevada's Constitution Article 10, Section 1, subsection 6.

If the above is not the case and if the business has to pay tax on its non-sold inventory in one fiscal year and then sells it in the following fiscal year, or it doesn't sell the following year and it remains in inventory, that business will be taxed multiple times on the same goods. Also, if a business has sold its inventory, but the goods are being warehoused to be shipped over a period of time that business will also pay the tax multiple times.

If a business can be taxed on inventory this creates an additional burden; businesses do not take inventory on their products to coincide with the State's fiscal year. This would require the business to take additional inventories during the year.

### Section 11, Subsection 2, paragraph (a)

This appears to subject a non-profit that receives money from a trust, investment income, endowments or bequests, the sale of goods through a store, rent received for allowing its facility to be used, advertising revenue from its publications, etc. to the tax.

### Section 11, Subsection 2, paragraph (b)

This section provides that the operating revenue from specified utility categories are exempt from the tax. Telecommunications and railroads are not included. However, NRS 704.033, NRS 704.035 requires the payment of a mill tax on their gross operating revenue. If they are not included, doesn't this constitute disparate treatment of similarly situated (regulated) businesses? Wouldn't this then violate the Commerce Clause. Please note that a business who pays gross receipts tax in another state is allowed a credit; why not a business who pays a similar tax in our own state?

### Section 11, Subsection 2, paragraph (c)

If the intent is to provide a credit for businesses that pay a form of gross receipts to the state why isn't boxing included? Promoters pay a tiered gross receipts tax pursuant to NRS 467.107. Please see last sentence of paragraph above.

### Section 18, Subsection 1, paragraph (1)

Since it does not matter where the location of the sale takes place, it appears that the language [also see Subsection 3 this Section and Section 21, subsection 1, paragraph (b)] would at the very least capture manufacturing or fabrication businesses which do not have plants in this state. Because Ford ships vehicles into Nevada that means we are now taxing the Ford Motor Company. Please note that if that is the case, Ford would not receive a credit for taxes paid to another state since they have plants in states that do not have a gross receipts tax.

### Section 18, Subsection 2

If a business does not have revenue equal to \$2,500,000 million in the first two reporting quarters, but then has revenue of over \$5,000,000 million in each of the last two quarters, they would not be able to subtract the \$112,000 from each of the first two quarters. This is a very real possibility with businesses that provide professional services.

## Questions and Comments on the GRT/UBT contd.

### Section 19

If the department changes the basis of accounting from cash to accrual for any business, that business would: (1) not be able to avail itself of the provision in Section 22, subsection 8; and (2) would have to keep the equivalent of two sets of books for purposes of auditing.

### Section 21, subsection 1, paragraph (b)

This section imposes the GRT on any business that produces goods in another state, which are shipped into Nevada. It further provides a credit for any gross receipts tax paid in that other state against the GRT. Since most states do not have a GRT the out of state business which does nothing more than ship goods to a business in this state will be subject to the tax.

Isn't this the very issue - "pyramiding, stacking, cascading" - that was acknowledged and that led to providing relief for contractors and subcontractors?

Has any consideration been given to the fact that this will be a difficult provision at best to enforce?

Additionally, isn't it likely that some companies will not want to ship products into Nevada, thereby limiting the availability of goods to Nevada Residents?

### Section 21, subsection 4, paragraphs (a)(2) and (b)(2)

Why is there reference to a "value added tax"? This is a tax used in foreign countries not the United States.

Why is there any reference to "A foreign country and any agency or political subdivision thereof . . ." ? Is this to either provide a tax deduction for tangible goods shipped from a foreign country to a business in Nevada, or visa-versa?

### Section 22, subsections 3 and 5

The interest and dividends pursuant to these two sections are deductible. However, in Section 10 interest and dividends are specifically included in the definition of "Total amount received or receivable". This will obviously result in disparate treatment for similarly situated businesses and potentially violates the equal protection clause.

### Section 22, subsection 11

This section provides that: "Any revenue received by the business entity from any sales of food for human consumption which is exempt from taxation under the Sales and Use Tax Act." Section 7, section 1, paragraph (a) is the provision which allows a deduction for cost of goods sold. Does this constitute double counting?

Additionally as the tax is not based on the ability to pay, a substantial receivable could result in a tax liability greater than cash-on-hand for the person/business. While another section in both bills allows the Department to defer payment for 30 days, it comes with penalty and interest charges. Further, a 30 day deferral may still not provide the business time to get the cash to make the payment. Is that fair?

### Section 23

This section provides for the apportionment of revenue by using the UDITPA\*. However, it does not weight the factors that make up the UDITPA formula. States that impose a UDITPA formula set that formula in statute. It is a major policy issue should not be left to the Tax Commission. Abrogating this responsibility is bound to result in lawsuits. Also, please note UDITPA is not used for gross receipts, therefore how it would work and what would be the best weighting of the formula is an unknown.

\*Uniform Division of Income for Tax Purposes Act.

### Section 24

The department of taxation is required, upon application, to reduce the tax liability of the business to the extent required by the Constitution (U.S. or Nevada), or law (U.S. or Nevada). This is bound to create a substantive appeal caseload to the Tax Commission.

**Questions and Comments on the GRT/UBT contd.**

MISCELLANEOUS

How will interstate and intrastate transportation be required to report?

Will UPS be required to report revenue from:

Shipments into Nevada?

Shipments in Nevada, to Nevada destinations?

Shipments originating in Nevada without regard for where they are to be shipped?

How will an airline report their gross revenue?

Will it be apportioned based on in Nevada line miles to total system miles?

Or will it be domestic system miles for international carriers?

Can we collect gross receipts from foreign carriers?

Or do we create a competitive disadvantage for domestic airlines?

Please note: There is a new court decision that says airlines are subject to these types of tax provisions.

How will the revenue be defined for Credit Card Billing Centers?

Will it be on interest charges?

If it is will it be the interest charges on:

Nevada Accounts only?

Or . . . . ?

What will determine revenue from a call center?

*Recommendation:* Provide that a contract entered into prior to the effective date of this bill which cannot be reopened or has a non-escalating clause is not subject to the increased tax.

*Reason:* If the contract does not contain a reopening provision or contains a non-escalating clause, a financial burden is created for the business.



## PROPERTY BASED TAXES

### PROPERTY TAX (As proposed in SB 308)

*Recommendation:* At a minimum this bill requires the following amendment:

Exemption from the calculation:

- (a) Of both current and future voter approved bond issues and operating overrides;
- (b) Existing voter approved school bond rollovers; and
- (c) The cost of unfunded mandates passed to local governments by the State or Legislature.

Reasons: The existing voter approved school bond rollovers will not enjoy the benefit of the future assessment increases as the bill is worded. It will take a higher tax rate in the future to cover bond issues and overrides. The burden is shifted to the local taxpayers. The proposed state budget contains an increase in funding of 1½ % to support PERS. The impact to local governments will be somewhere between \$7,875,000 and \$12 million dollars, depending on whether or not the contribution to PERS is shared or fully paid by the local government. This unfunded mandate will impact budgets immediately and have a compounding effect

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### REAL PROPERTY TRANSFER TAX

*Recommendations:* The following issues should be addressed to make this a viable revenue source.

Provide the basis on which the tax is to be levied.

Specify the event and the time frame after the event that the tax would be required to be remitted (i.e., upon the close of escrow, the recording of the title, etc. the tax is to be remitted to the County Recorder within 30 days).

Provide a collection allowance for the County Recorder.

Provide penalties for non-compliance.

Provide that transactions which are completed prior to the effective date of this legislation are not subject to the increase.

Provide that the tax is remitted to the State.

Provide that a report, similar to that required for room tax, be provided to the Department of Taxation.

*Recommendation:* Create a provision that would allow a credit if the same parcel is sold within a two year period. This would be similar to a credit provision currently allowed under IRS code for the estate tax, which actually provides for a credit over a ten-year period. The IRS credit is a tiered time period, with a corresponding percentage allowed for the credit.

Reason: This would help minimize the pyramiding/stacking nature of the RPTT on development properties (the tax potentially being imposed two, three or four times over on the same piece of property).

*Recommendation:* (This is a recommendation from the Recorders) Provide that the Attorney General will provide any legal interpretations required by a Recorder.

Reason: This would eliminate the current problem with each District Attorney issuing a ruling, which can result in multiple interpretations of the same issue.

## OTHER TAXES

### ALCOHOLIC BEVERAGE TAX

*Recommendation:* Provide that a contract entered into prior to the effective date of this bill which cannot be reopened or has a non-escalating clause is not subject to the increased tax.

*Reason:* If the contract does not contain a reopening provision or contains a non-escalating clause, a financial burden is created for the person/business who is providing the service under contract.

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### ROOM TAX - TRANSIENT LODGING TAX (Amodei/ Care bill)

*Recommendation:* Provide that rooms which are sold prior to the effective date of this bill are not subject to the increased tax.

*Reason:* Frequently, blocks of rooms are purchased by groups or brokers for trips in the future. There is no easy way to collect this tax on pre-sold rooms.

*Recommendation:* Give authority to the Department of Taxation for the notification to local governments of any legislative changes.

*Reason:* There is no provision for uniform notification. Historically, this has presented problems with some local governments not knowing that the room tax was increased.

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### SERVICES TAX (Amodei/Care bill and proposal in Senate taxation)

*NOTE:* If both the Amusement Tax and Transaction Tax on Services should be approved, they should be merged into one new Chapter in Title 32. This would simplify forms, regulations, administration etc.

*Recommendation:* Add a collection allowance. Use Section 14 from amusement tax in SB 382.

*Reason:* Self-explanatory.

*Recommendation:* Provide that service contracts entered into prior to the effective date of this bill are not subject to the increased tax.

*Reason:* As with the purchase of tangible goods, contracts are frequently entered into for the purchase of the service. If the contract does not contain a reopening provision or contains a non-escalating clause, this creates a financial burden for the person/business who is providing the service under contract. This is a common provision which is used when there has been an increase in the sales tax rate.

*Recommendation:* Provide that services which are provided to non-profits qualified under the provisions of NRS 372 are exempt from paying the tax.

*Reason:* For conformity with sales and use tax provisions.

*Recommendation:* Provide that service functions must be separately stated on any billing form from other non-taxable services or tangible goods being purchased.

*Reason:* To simplify audit procedures.

*Recommendation:* Provide that the Department may not impose an implied price on a service which is provided at no charge.

*Reason:* This would insure that services which are provided "pro-bono" would not be subject to the tax.

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## OTHER ISSUES

**IMPLEMENTATION DATES** - The existing taxes which are being considered for rate increases have been shown with implementation dates of July 1, 2003. Because of the forms require modification and notification is required of the rate change it would seem that the effective date should be August 1, 2003.

**PASSIVE REVENUE GENERATION** - Various provisions are contained in the Governor's, Task Force and Amodei/Care bills that should be incorporated into the final tax bill. **Additionally**, the Amodei/Care bill contains "Revenue Reform" proposals which should be considered for inclusion in the final bill.

**TAX COMMISSION** - This is a part-time Commission. With all the changes being contemplated recognition should be given to the increased work load of the Commission; the Commission's salary should be increased.

**ADOPTION OF REGULATIONS** - Under NRS 233B there are specific procedures and time frames for the adoption of regulations. The majority of proposals will require regulations to be adopted. The need for regulations prior to the start date for the collection of the tax should be taken into account when implementation dates are being considered.

**INFRASTRUCTURE FOR REVENUE COLLECTION** - The ability of the Department of Taxation or the County Recorders to adapt collection systems or create collection systems is essential for the generation of revenue to the State. There must be sufficient time to gear-up for the collection of new taxes or for those taxes that have been substantially changed. **Additionally**, there should be a provision to fund the infrastructure collection changes and personnel requirements of the Department.

**ECONOMIC DEVELOPMENT** - Presuming that the State is still looking to diversify its economy, consideration should be given to providing for an abatement of any new business tax.

**OVERSIGHT COMMITTEE** - Because of the numerous changes to existing tax law and potential implementation problems of newly imposed taxes a Legislative Oversight Committee should be created. In addition to the specific issues to be monitored by this Oversight Committee, this Committee should also have the ability to create technical committees as needed. This would allow the appointment of persons with expertise with regards to the issue being evaluated. (For example: Utilizing the expertise of Recorders and Title companies to evaluate changes made to the RPTT, or for the purpose of making recommendations to the Legislative Oversight Committee as to the best manner in which to include stock transfers in the RPTT.)

This should be an interim committee not a standing committee.

(Please note that this is a modification of the business tax proposal contained in the Amodei/Care bill – SB 382.)

**The following amendment to NRS 364A - the Business Tax - represents a proposal that:**

Can be implemented no later than the second quarter of this coming fiscal year. For the first and possibly the second quarter reporting quarter (2<sup>nd</sup> and 3<sup>rd</sup> fiscal quarters) the department of taxation would receive a list of employers subject to quarterly reporting by the employment security department. The department of tax would then send out a bill. Until the department can modify the current state business tax form and upgrade its computer system this is the procedure that would have to be used. It was testified to by Chuck Chinnock.

It is a simple tax to administer and comply with because the administrative provisions which apply to the current business tax would also apply to this tax. Between the department of taxation and the employment security division the data base of all in state employers is in place. The only regulation which appears to be immediately needed would be for the creation of the form. This is easily done under the emergency provision contained in NRS 233B.

Because it is a tax based on taxable wages it captures those employers who either pay minimum wages or utilize part-time employees who do not receive any benefits. They are the employers who are least likely to provide medical insurance. Their employees are the most likely to utilize and in some cases put a strain on the services provided by state and local governments.

It does not penalize those employers who pay higher wages, since the taxable wage base for the current year is capped at \$21,500. It should be noted that the taxable wage base is increased each calendar year and in each of the last three years (calendar) has increased by \$600 each year. This tax provides the added advantage of not only increasing because it is a percentage tax but also increasing because the taxable wage base is increased every calendar year.

It does not hinder economic development efforts which have focused on attracting industries that pay higher wages and provide benefit packages.

Keeping the current tax in place and adding this tax would insure that all businesses which have employees in Nevada are paying a tax to support the functions of government which are utilized by these employees.

***Major points for proposed implementation of Business Tax based on taxable wages.***

*This would be a new provision added to NRS 364A.. The Department of Taxation is responsible for the administration of most of the taxes contained therein.*

- 1. A tax is hereby imposed upon the privilege of conducting business in this state except as other wise provided in this section, the tax for each calendar quarter is due on the last day of the quarter and must be paid on or before the last day of the month immediately following the quarter on the basis of the taxable wages as reported on the Employer's Quarterly Contribution and Wage Report, or the successor form as filed with the Nevada Employment Security Division.*
- 2. An employer subject to the provisions of Section 1, of this act shall pay a tax at a rate of ??? percent of the taxable wages as reported on the Employer's Quarterly Contribution and Wage Report, or the successor form as filed with the Nevada Employment Security Division.*
- 3. The tax imposed by this section must not be deducted in whole or in part, from the wages of persons in employment for that employer.*
- 4. An employer who is not subject to the requirements of NRS 612 shall pay the business tax pursuant to NRS 364A.140*
- 5. At such time as is practicable the department shall modify the business tax form to include the tax imposed by this section.*

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The definition of a Business is found in NRS 364A.020. It also provides for the exclusion of governmental entities, non-profits pursuant to 26USC§501 (c), and a business that produces motion pictures. An amendment is required to NRS 364A.140 so that the current business tax imposed under this section is paid only if the business is not required to file with the Employment Security Division under the provisions of NRS 612.